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The New Plumbers?
By Tom Wicker

WASHINGTON — Adm. Stansfield Turner, the new Director of Central Intelligence, scored points with some members of the Senate Intelligence Committee when he recently made the following comparison:

An employee of, say, the Agriculture or Commerce Departments would suffer criminal prosecution for disclosing "insider" information by which someone could make money in the stock or commodities markets. But in most circumstances a Government employee who disclosed high national security information could not be prosecuted.

Did that really make sense, the Admiral asked. Some members of the committee agreed with him that it didn't. And a strange possibility is that a committee specifically organized to "oversee" the Central Intelligence Agency and keep its activities within bounds may actually propose legislation that would impose criminal penalties on anyone disclosing certain kinds of security secrets.

Admiral Turner's flawed analogy—an established body of law, having nothing to do with the First Amendment, protects "insider" financial information, which is of little importance to the general public anyway—is not the only reason. The C.I.A. has long pressed for an official secrets act, Admiral Turner has recently pushed the idea, and some members of the committee already seem more anxious to maintain good relations with the C.I.A. than to check on its activities.

No one seems to be thinking, however, in terms of a broad-gauged secrets act that would apply to all so-called "national security" information. Several Senators, instead, have spoken of the possibility of an act narrowly designed to impose criminal penalties on any Government employee disclosing a "properly classified" secret pertaining to the C.I.A.'s "sources and methods" for collecting information. One Senator even offered a qualification that disclosure probably would have to "endanger life" to be covered.

Even such a limited statute would pervert the Intelligence Committee's basic function and might well violate the First Amendment. It would be exceptionally difficult to draft it tightly enough so that the C.I.A. could not claim that almost any disclosure threatened its "sources and methods"—an ineffable term of the spook's art—as well as someone's life. It might well result in prosecution of those who leak information most crucial to civilian control of the C.I.A., while leaving the agency free to leak whatever it considered to be to its institutional or political advantage.

Besides, while the committee would not aim its statute at the press, re-

porters would be particularly threatened. Leakers are usually hard to identify; and if a leaker of information covered by the secrets act could not quickly be found, the reporter who had printed the story would surely be hauled before a grand jury, held in contempt and jailed if he did not identify his source.

For these and other reasons—not least that the committee would be stifling one of its own best "source and methods" of oversight—severe opposition would be certain. President Carter already has opposed criminal penalties for "security" leaks, and numerous members of the committee would fight the idea. But the statute would have a surface plausibility that might make it hard to resist.

Another piece of legislation bound to be considered by the Intelligence Committee is a 1977 version of a bill put forward last year by Attorney General Edward Levi and Senator Edward Kennedy; it would have required a court order for "foreign intelligence" wiretaps, the only kind that can now be installed without judicial warrant.

The Levi-Kennedy bill had much to recommend it but failed to pass because it was flawed in three major particulars. In certain circumstances critics thought loose enough to create a loophole, it would have permitted taps on American citizens without a showing that a crime was being, or about to be, committed. It would not have permitted a judge to question the Government's certification of prerequisite facts (such as that the target was "foreign agent"). And it included a "disclaimer" of intent to limit inherent Presidential authority in the field. The disclaimer might conceivably have served to confirm that a President had such authority, giving him the latitude to tap without a warrant.

Informed sources say the Carter Administration's version of this bill will soon be sent to Capitol Hill, and has so far consumed more time in the Justice Department's Legislative Liaison Office than any other legislation.

Meanwhile, the Intelligence Committee is at work on its own version, and several concerned members offer the opinion that it probably would extend the bill's protection to Americans living overseas and eliminate the controversial "disclaimer" of intent to limit Presidential authority, if any. But as far as could be learned, there's little possibility the committee will require a showing that a crime is being, or about to be, committed before a warrant to tap any American citizen could be granted.

That was the intelligence agencies' price for consenting to such a bill last year, and there's no reason to believe they'll agree to it this year unless the same price is paid.